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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/048,229	01/29/2002	Peter Herold	2001-1907A	3386
513	7590	06/18/2004	EXAMINER	
WENDEROTH, LIND & PONACK, L.L.P.			REYES, HECTOR M	
2033 K STREET N. W.				
SUITE 800			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20006-1021			1625	

DATE MAILED: 06/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/048,229	HEROLD ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Hector M Reyes	1625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 5/7/04.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-18 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) \_\_\_\_\_ is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) 1-18 are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)                          4) Interview Summary (PTO-413)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                          Paper No(s)/Mail Date. \_\_\_\_\_.  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.                          5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

**Lack of Unity**

This Office Action vacates Lack Of Unity dated on 4/9/04.

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

- Group I, claims 1 to 9, drawn to a process for the preparation of known compounds of formula (1), classified in Class 564 subclass 170.
- Group II, claims 10 to 12, drawn to a series of compounds of Formula II, classified in Class 564, subclass 161.
- Group III, claims 13 to 15, drawn to a series of compounds of Formula III, classified in Class 540, subclass 485
- Group IV, claims 16 to 18, drawn to a series of compounds of Formula VII, classified in Class 564 subclass 192.

The inventions listed as Groups I through IV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

Group I, is *drawn to a process for the preparation of compounds of formula I*, which does not necessarily required any of the claimed compounds in claimed in Groups II, III or IV for its preparation. Compounds of Formula I can be prepared by other alternative processes.

Compounds claimed in Groups II, III and IV can be used in multiple other synthesis.

Compounds claimed in Groups II, III and IV contain significantly different chemical structures and belong to different classes and subclasses.

A given references anticipating or suggesting any of the compounds claimed in Groups II, III or IV cannot be used to reject any of the claims of Group I under 35 USC 102 or 35 USC 103.

Because these inventions are distinct for the reasons given above and the search required for one of the Groups is not required for the others, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

**Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement is traversed (37 CFR 1.143).**

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### **CONCLUSION**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hector M Reyes whose telephone number is 703-605-1153. The examiner can normally be reached on M-F (9:00 AM-5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Rotman can be reached on (703) 308-4698. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4556 for regular communications and 000-0000 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

Hector M. Reyes PhD JD  
AU 1625  
June 17, 2004



PAUL J. KILLOS  
PRIMARY EXAMINER